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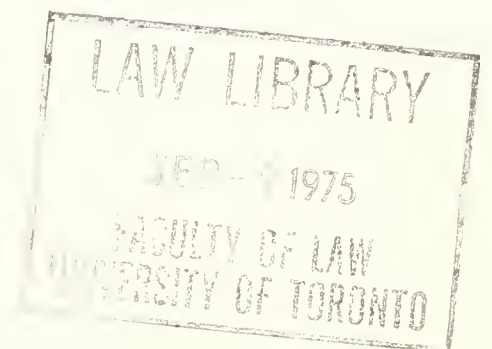
CASES AND MATERIALS

1975-1976

Prepared by: Professors R.C.B. Risk and B.J. Reiter
of the Faculty of Law,
University of Toronto

Revised: Summer, 1975, with the assistance of
S. Erlichman, Esq.

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Chapter I

INTRODUCTION(i) Sample House Purchase

Almost all of this course is a study of the sale of land, and mortgages. These two topics do not share much common ground of legal doctrine. The justification for combining them is functional, since in practice they are often found together and must be considered together. These materials consist mainly of cases and legislation. The introduction is intended to show you some of the common documents, and to give you a fleeting glimpse at a small and simple part of the business background of the course. It is a description of a fictitious purchase of a house. For the sake of clarity and convenience, considerable liberties have been taken with practice; the correspondence and documents have been simplified and distorted in a fashion which might horrify an experienced conveyancer. Nevertheless it was not for him that this introduction was prepared, and its purpose is not to teach you his skills.

The story begins with Sam Smith, who decided to sell his house. Why he reached this decision doesn't matter: he may have been shifted by his employer to another city; he may have been a young man with a growing family and needed a larger house; or he may have been older, his children may have grown up and left home, and he may have wished to move into an apartment. His house was worth about \$30,000.00, and was subject to a mortgage under which about \$15,600.00 was owed. He decided to retain a real estate agent to sell it for him. A few owners sell their own properties, to avoid paying a commission, but most properties are sold by agents. Most agents are generally available only on the terms of standard form listing agreements.

The agent found eager purchasers, John and Judith Jones. An agreement was entered into on June 17th, 1971, which contemplated completion, or closing, on September 15th, 1971. Some purchases, particularly those of consumer goods, are instantaneous transactions, but purchases of land always involve an interval between the time the agreement is entered into and the time the deal is closed. The reasons are fairly obvious. For example, the vendor may need time to find some new accommodations, the purchaser may need time to find money, both may need time to arrange for moving, and their lawyers will certainly need time to perform the various technical tasks which must be done. The purchase price was \$30,000.00: John and Judith were to assume the existing mortgage, and pay the balance about \$14,400.00 in cash. They paid a deposit of \$1,500.00 which was to be held by the agent. The remainder, about \$12,900.00, was due on closing. John and Judith did not have \$12,900.00, they had saved about \$6,000.00, and they counted on borrowing the rest, about \$7,000.00, from Judith's mother, Mrs. J.B. Kindly. The agent, after having sent copies of the agreement to the lawyers who were going to act for John and Judith, disappears from this story and this course.

The story now shifts to the lawyers' offices, and first to the firm acting for John and Judith. They were also acting for Mrs. Kindly, and there was therefore a possibility of a conflict in interest; the firm's position was explained in a letter to Mrs. Kindly.

The propriety of ever acting for the two parties that have potentially conflicting interests has recently been questioned in England by a section of the Law Society, although the Council of the Society seem to have affirmed the same principle that is expressed in the Ruling of the Law Society, *infra*. The purpose of arranging the story in this introduction in a way that raises this question is simply to save valuable space.

